

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHERYL Y. JERNIGAN, §
Plaintiff, §
§
v. § No. 3:22-cv-02580-D (BT)
§
CHARLES B. McMILLAN, et al., §
Defendants. §

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Cheryl Y. Jernigan seeks leave to proceed *in forma pauperis* in this *pro se* civil action. For the reasons stated, the Court should deny Jernigan's request and dismiss her case unless she pays the \$402.00 filing fee by December 29, 2022.

The procedure for a party to bring a lawsuit *in forma pauperis* is set forth in [28 U.S.C. § 1915](#). Section 1915 provides:

[A]ny court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

[28 U.S.C. § 1915\(a\)\(1\)](#) (emphasis added). The goal of § 1915(a) is to allow access to federal courts for those plaintiffs who lack the financial resources to pay any part of the statutory filing costs. [*Prows v. Kastner*, 842 F.2d 138,](#)

[140 \(5th Cir. 1988\)](#). The Court must examine the financial condition of the applicant to determine whether the payment of fees would “cause undue financial hardship.” *Id.* “This entails a review of other demands on individual plaintiffs’ financial resources, including whether the expenses are discretionary or mandatory.” *Id.* The Court may require a plaintiff to complete a financial affidavit in support of a motion to proceed *in forma pauperis*. [Nottingham v. Warden, Bill Clements Unit, 837 F.3d 438, 439-40 \(5th Cir. 2016\)](#).

In this case, Jernigan filed a financial affidavit in support of her motion stating that for the last twelve months her average monthly income has been \$279.00 from self-employment, \$1,478.00 from retirement, and \$1,772.10 from disability. She owns a home valued at \$242,000. Jernigan also owns a 2019 Mercedes Benz valued at \$31,000. She has no dependents. In view of all the evidence, the Court finds that paying the \$402.00 filing fee would not “cause an undue financial hardship.” See [Prows, 842 F.2d at 140](#).

The Court should DENY Jernigan’s motion for leave to proceed *in forma pauperis* ([ECF No. 4](#)) and dismiss her case without prejudice unless she pays the \$402.00 filing fee by December 29, 2022.

Signed November 28, 2022.



REBECCA RUTHERFORD
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b).* To be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n, 79 F.3d 1415, 1417 (5th Cir. 1996), modified by statute on other grounds, 28 U.S.C. § 636(b)(1)* (extending the time to file objections to 14 days).